

DECISION



17062
THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

Mr. Agazarian

FILE: B-194741

DATE: February 19, 1981

MATTER OF: Charles R. Vincent

DIGEST: Department of Agriculture employee transferred to duty station in Mexico City under the Foreign Service Travel Regulations (FSTR) may not be paid temporary quarters subsistence expenses and miscellaneous expenses under the Federal Travel Regulations (FTR) when transferred back to the United States in connection with his intradepartmental reassignment to the Forest Service. Where employee was transferred overseas under Department-wide regulation providing for payment of relocation expenses under the FSTR, employee may not be reimbursed relocation expenses under the FTR incident to his return transfer.

[Claim for] This action is in response to a request from Mr. H. Larry Jordan, an authorized certifying officer of the Department of Agriculture, for a decision on a voucher submitted by Mr. Charles R. Vincent, an employee of the Department of Agriculture (USDA), for relocation expenses incurred incident to a transfer from Mexico City, Mexico, to Albuquerque, New Mexico.

The record shows that on August 4, 1975, Mr. Vincent reported for duty in Mexico City, Mexico, with the USDA's Animal and Plant Health Inspection Service. Mr. Vincent's transfer to Mexico City was authorized under the provisions of the Foreign Service Travel Regulations which are published in Volume 6 of the Foreign Affairs Manual (FAM). Such authorization was pursuant to paragraph 581 of Title 7 of USDA's Administrative Regulations which provides as follows:

"581. AGRICULTURAL ATTACHES AND OTHERS ASSIGNED ABROAD. Pursuant to section 603 of Title VI of the Agricultural Act of 1954 (7 U.S.C. 1763), agricultural attaches and other employees of the Department assigned abroad under said Title VI or other authority will be paid the allowances provided under Title IX of the Foreign Service Act

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of 1946 (22 U.S.C. 1131 et seq.), and the Foreign Service regulations of the State Department."

We note that section 603 of Title VI of the Agricultural Act of 1954 is now set forth at 7 U.S.C. 1766a (Supp. III, 1979).

By mutual agreement between the Animal and Plant Health Inspection Service and the Forest Service, USDA, Mr. Vincent transferred to Albuquerque, New Mexico, incident to employment with the Forest Service effective November 21, 1976. The Forest Service authorized him reimbursement for travel and relocation expenses pursuant to the Federal Travel Regulations (FTR) (FPMR 101-7, May 1973), including reimbursement for miscellaneous expenses and 30 days' temporary quarters subsistence expenses.

The employee has claimed reimbursement in the amount of \$1,460.40 for temporary quarters subsistence and \$200 for miscellaneous expenses incurred incident to the transfer. The USDA allowed payment of the voucher. However, the agency has subsequently determined that such payment, pursuant to the Federal Travel Regulations, was erroneous as the employee had been reimbursed under the Foreign Service Travel Regulations incident to his transfer to Mexico City.)

(Section 5724(a) of title 5, United States Code, is the general authority for payment of travel expenses of employees incident to a transfer in the interest of the Government. That authority does not extend to individuals transferred under the Foreign Service Act of 1946, as amended. In this regard 5 U.S.C. 5724(g) provides:

"(g) The allowances authorized by this section do not apply to an employee transferred under chapter 14 of title 22."

The allowances authorized by 5 U.S.C. 5724a(a) (1976), including reimbursement for temporary quarters subsistence expenses and the miscellaneous expenses allowance, are payable to employees for whom the

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Government pays travel and transportation expenses under section 5724(a) and thus, are not payable to employees transferred under chapter 14 of title 22, United States Code. See Albert N. Alexander, B-188437, September 15, 1977. Furthermore, our Office has held that where an agency has transferred an employee to a foreign duty station under the Foreign Service Travel Regulations, the employee is not entitled to reimbursement of relocation expenses under the Federal Travel Regulations incident to his return to the United States. B-163639, March 27, 1968; and B-177277, February 12, 1973, and May 3, 1973.

In decision B-186548, February 23, 1977, we held that where employees were transferred to overseas positions under the provisions of the Foreign Service Travel Regulations, the Department of Agriculture did not have discretion to authorize benefits provided under the Federal Travel Regulations issued pursuant to 5 U.S.C. 5721-5733 when such employees are transferred back to the United States. In view of the Department-wide regulation quoted above, we see no reason why the rule set forth in that decision is not applicable to Mr. Vincent's return to the United States as an employee of the Department of Agriculture. Accordingly, as he was transferred to Mexico City under the authority of the Foreign Service Travel Regulations there is no authority to reimburse him under the Federal Travel Regulations for temporary quarters subsistence expenses or miscellaneous expenses incident to his transfer to the United States. Thus, he is indebted to the United States in the amount of \$1,660.40 as a result of the erroneous payment he received for such expenses.

The USDA asks whether it may waive the indebtedness resulting from such erroneous overpayment. The authority to waive erroneous overpayments under 5 U.S.C. 5584 is specifically limited to payments of pay or allowances "other than travel and transportation expenses and allowances and relocation expenses." Since the temporary quarters subsistence expenses and miscellaneous expenses allowance are relocation expenses, there is no authority to waive the erroneous payments made to Mr. Vincent.

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Lastly, the agency asks whether Mr. Vincent would be entitled to the reimbursement for real estate expenses incurred incident to the purchase of a residence at the new official station in Albuquerque, New Mexico. There is no authority under the Foreign Service Travel Regulations for payment of real estate expenses. Furthermore, we note that even if the Federal Travel Regulations were applicable to Mr. Vincent's transfer he would not be entitled to payment of real estate expenses since 5 U.S.C. 5724a(a)(4) and the implementing regulation at FTR para. 2-6.1a provides that such expenses are allowable only when the old and new duty stations are located within the United States or its territories and possessions.

In accordance with the above, the erroneous payment for temporary quarters subsistence expenses and the miscellaneous expenses allowance is properly for collection.)

Milton J. Auer

For The Comptroller General
of the United States